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Supreme Court, U.S.
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No. 94-1763

In the Supreme Court of the United States

OCTOBER TERM, 1995

JAMES I. MUIRHEAD, ET AL., PETITIONERS

v.

FARMERS HOME ADMINISTRATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Farmers Home Administration, a federal agency, may be barred from enforcing its lien on Mississippi property by a state statute of limitations.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 42 F.3d 964. The opinion and order of the district court (Pet. App. 10a-22a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 24, 1995. The petition for a writ of certiorari was filed on April 24, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1979 and 1980, petitioners executed promissory notes in favor of respondent Farmers Home Administration (FmHA) that were secured by deeds of trust on properties located in Mississippi. Pet. App. 2a. In April, 1982, and again in May, 1985, FmHA sent petitioners notices of acceleration and demand for payment on the notes, declaring them to be immediately due and payable. *Ibid.*

In October, 1991, FmHA initiated foreclosure proceedings in the United States District Court for the Southern District of Mississippi. Pet. App. 2a, 12a. Petitioners answered and counterclaimed that under Mississippi law, the government's liens were unenforceable because the state statute of limitations had run on the underlying notes. *Id.* at 2a. The district court dismissed the counterclaim and granted FmHA summary judgment, concluding that the government was not barred from bringing a foreclosure action because state statutes of limitations do not bind the federal government. *Id.* at 10a, 17a.

2. The court of appeals affirmed. Pet. App. 1a-9a. The court underscored that this Court has long held that state statutes of limitations do not run against the federal government, citing, *inter alia*, *United States* v. *Summerlin*, 310 U.S. 414, 416 (1940). Pet. App. 4a. The court found the state statute upon which petitioners relied to be a statute of limitations and therefore concluded it could not operate to extinguish the government's right to foreclose. *Id.* at 5a-6a.

ARGUMENT

1. Petitioners argue (Pet. 5-12) that Mississippi's statute of limitations should govern a suit brought by a federal agency involving debts incurred under a

federal loan program because this Court's decision in *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979), dictates that transactions with the federal government should generally be governed by state law. *Kimbell Foods*, however, does not apply here.

In *Kimbell Foods*, this Court stated that it "has consistently held that federal law governs questions involving the rights of the United States arising under nationwide federal programs." 440 U.S. at 726. The Court observed, however, that where there is no federal law to be applied, the federal courts may "fill the interstices of federal legislation 'according to their own standards.'" *Id.* at 727. In such cases, although federal law continues to govern, the federal courts may either adopt state law as the uniform federal law or "fashion a nationwide federal rule." *Id.* at 728.

By its own terms, *Kimbell Foods* only controls where there is no federal standard to apply as the uniform federal rule. See *United States* v. *Kennedy*, 738 F.2d 584, 586 n.3 (3d Cir. 1984). In this case, there is no need to "fill the interstices of federal legislation" because there exist well-established federal rules governing limitations periods. As petitioners acknowledge (Pet. 6), this Court has consistently ruled that "[w]hen the United States becomes entitled to a claim, acting in its governmental capacity, and asserts its claim in that right, it cannot be deemed to have abdicated its governmental authority so as to become subject to a state statute putting a time limit upon enforcement." *United States* v. *Summerlin*, 310 U.S. 414, 417 (1940); accord *United States* v. *California*, 113 S. Ct. 1784, 1790-1791 (1993); *United States* v. *John Hancock Mutual Life Ins. Co.*, 364 U.S. 301, 308 (1960); *Guaranty Trust Co.* v. *United States*, 304 U.S. 126,

132-135 (1938). Congress's failure to provide a statute of limitations to govern actions brought by the United States is understood to manifest an intent to have no limitations period. See, *e.g.*, *Occidental Life Ins. Co.* v. *EEOC*, 432 U.S. 355, 367 (1977); *Costello* v. *United States*, 365 U.S. 265, 281-283 (1961); *United States* v. *Nashville, C. & St. L. Ry.*, 118 U.S. 120, 125 (1886); *United States* v. *Knight*, 39 U.S. (14 Pet.) 301, 315 (1840). "[T]here is no vacuum to fill because the ancient rule that the United States is not subject to a limitations period clearly addresses the issue presented." *Westnau Land Corp.* v. *United States SBA*, 1 F.3d 112, 117 (2d Cir. 1993).

The courts of appeals that have considered the precise question involved in this case have all agreed, based on *Summerlin* and *Kimbell Foods*, that there is no statute of limitations governing suits brought by the United States to foreclose on a mortgage. See *Magnolia Fed. Bank for Savings* v. *United States*, 42 F.3d 968, 970 (5th Cir. 1995); *United States* v. *Alvarado*, 5 F.3d 1425, 1430-1431 (11th Cir. 1993); *Westnau Land Corp.*, 1 F.3d at 115-116; *United States* v. *Dos Cabezas Corp.*, 995 F.2d 1486, 1489-1490 (9th Cir. 1993); *United States* v. *Ward*, 985 F.2d 500, 503 (10th Cir. 1993).[1]

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[1] Petitioners place considerable emphasis (Pet. 5 n.4, 11 n.7, 15-16) upon the district court decisions in *Curry* v. *United States SBA*, 679 F. Supp. 966 (N.D. Cal. 1987), and *United States* v. *Thornburg*, 835 F. Supp. 543 (E.D. Cal. 1993), in support of their argument that state law should apply here. A claimed conflict between district courts and courts of appeals does not ordinarily warrant this Court's attention.

In any event, the reasoning of the court in *Thornburg* is not persuasive because it did not consider or discuss this Court's decision in *Summerlin*. *Curry* is similarly unpersuasive because the government attorney in that case conceded at oral

2. Petitioners contend in the alternative (Pet. 12-16) that the statute at issue, Miss. Code Ann. § 15-1-21 (1972), establishes a substantive real property right, and is not a statute of limitations.[2] By its plain language, the statute does not establish a real property right, but instead bars a remedy in equity upon the passage of time. The court of appeals correctly found that the statute "reads like a statute of limitations: it forecloses an action or proceedings to enforce a lien not brought within the time for commencing a suit on the debt involved." Pet. App. 6a. The statute's placement in Chapter 1 of Title 15 of the Mississippi Code, entitled "Limitations of Actions," confirms this common-sense reading. *Ibid.*

This Court has rejected attempts to disguise time limitations as substantive rights. In *Summerlin*, the

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argument that "the status of SBA's property interest [at issue] should be governed by California law." 679 F. Supp. at 970-971. No such concession exists here. In this case, not only did the government contest the applicability of state law, but the deed of trust executed by petitioners expressly provided that the "[b]orrower agrees that the Government will not be bound by any present or future State laws * * * prescribing any * * * statute of limitations." Gov't C.A. Br. 34.

[2] Miss. Code Ann. § 15-1-21 (1972) provides:

> When a mortgage or deed of trust shall be given on real or personal estate, or when a lien shall be given by law, to secure the payment of a sum of money specified in any writing, an action or suit or other proceedings shall not be brought or had upon such lien, mortgage, or deed of trust to recover the sum of money so secured except within the time that may be allowed for the commencement of an action at law upon the writing in which the sum of money secured by such lien, mortgage, or deed of trust may be specified. In all cases where the remedy at law to recover the debt shall be barred, the remedy in equity on the mortgage shall be barred.

Court rejected the argument that the state statute was not a statute of limitations but rather a "statute * * * for the orderly * * * settlement of decedents' estates," holding that the United States is not "subject to a state statute putting a *time limit* upon enforcement" of its claim. 310 U.S. at 417 (emphasis added). In this case, as in *Summerlin*, application of the state statute would not resolve the propriety of the government's substantive property right but whether the undisputed property right of the government may be cut off by the passage of time, a classic statute of limitations question. See *United States* v. *Ward*, 985 F.2d at 503 (Oklahoma's lien expiration law is a statute of limitations "because the clear import of the statute is to limit the time within which an Oklahoma mortgage can be enforced").[3]

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[3] Petitioners' reliance (Pet. 13-14) on *Dupree* v. *Mansur*, 214 U.S. 161 (1909), is unavailing. *Dupree* was a bankruptcy case in which the debtor invoked a state statute of limitations similar to the one at issue here. The Court rejected the argument that federal courts were free to ignore state statute of limitations in suits between private parties because, foreshadowing the dichotomy later announced in *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938), the limitations period was "substantive," rather than "procedur[al]." 214 U.S. at 167.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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